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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/754,859	01/04/2001	Chad Daniel Fisher	2000-12	4297

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4501 Charlotte Park Drive  
Charlotte, NC 28217-1979

EXAMINER

SELLERS, ROBERT E

ART UNIT	PAPER NUMBER
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1712

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DATE MAILED: 11/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

7C-8

# Office Action Summary

Application No.

09/754,859

Applicant(s)

FISHER, CHAD DANIEL

Examiner

Robert Sellers

Art Unit

1712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 4 and 8-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

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Claims 8-11 and 12-23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to non-elected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 5. Claim 4 is withdrawn as being directed to a non-elected species of epoxy resin.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent No. 10-25666.

Claims 1-3 and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Mori et al.

Claims 1-3, 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aufdermarsh, Jr., Takata, Imai et al. and Japanese '875, '997, '475, '280, '091 and '674 in view of Mori et al. and Japanese '666.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aufdermarsh, Jr., Takata, Imai et al. and Japanese '666, '875, '280 and '674 in view of Japanese '670 and '346.

The rejections are maintained for the reasons of record set forth in the previous Office action. The arguments filed October 30, 2002 have been considered but are unpersuasive.

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According to MPEP § 2111.03 (Transitional Phrases section), “[f]or the purposes of searching for and applying prior art under 35 U.S.C. 102 and 103, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, ‘consisting essentially of’ will be construed as equivalent to ‘comprising’ (*PPG Industries v. Guardian Industries*, 48 USPQ2d 1351, 1355, Fed. Cir., 1998 and *In re Janairama-Rao*, 137 USPQ 893, 895-896, CCPA 1963)” “If an applicant contends that additional steps or materials in the prior art are excluded by the recitation of ‘consisting essentially of,’ applicant has the burden of showing that the introduction of additional steps or components would materially change the characteristics of applicant’s invention (*In re Lajarte*, 143 USPQ 256, CCPA 1964).”

The additional triazine and ethylene-imine of Japanese ‘666 is not precluded from the claimed “consisting essentially of” language due to the common objective of adhering synthetic fibers with a formulation containing the common components of an epoxy resin, a resorcinol-formaldehyde condensate, a rubber latex and a blocked polyisocyanate (specification, page 4, third paragraph). The triazine and ethylene-imine would not materially affect the basic and novel characteristics of the claimed composition based on the common utilities and components within the compositions of the prior art and claims.

Although Comparative Example 2 (col. 11, Table 6) of Mori et al. containing sorbitol diglycidyl ether (col. 9, Table 3, E-7) is comparative, it is a viable formulation containing the claimed 4% by weight of sorbitol diglycidyl ether with a resorcinol-formaldehyde resin latex regardless of its characterization as comparative.

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Aufdermarsh, Jr. (col. 3, lines 10-15 and col. 4, line 4), Takata et al. (col. 3, lines 66-68), Imai et al. (col. 6, lines 60-63) and Japanese '666, '997, '475, '280, '091 and '674 are drawn to the single-dip coating of polyester fibers with adhesives comprising an epoxy resin and a resorcinol-formaldehyde latex containing a rubber which is the identical utility and components as those claimed. The instant specification on page 4, the third paragraph, deems the suitability of a blocked polyisocyanate which embraces that of Aufdermarsh et al., and Japanese '875, '475, '280' and '674. Accordingly, the blocked polyisocyanates of these references do not affect the basic and novel characteristics of the claimed composition.

The water-soluble polyurethane of Takata, the ethylene urea of Japanese '091 and the isocyanurate-containing polyol of Japanese '674 is not precluded from the claimed "consisting essentially of" terminology because both the prior art and claims share the identical use of adhering polyester fibers with a single-dip blend of an epoxy resin and a rubber-containing resorcinol-formaldehyde latex.

Japanese '670 and '346 set forth the adhesion of polyester fibers with separate treatments of sorbitol diglycidyl ether and a mixture of a resorcinol-formaldehyde/rubber latex. Thus, the polyester fibers are treated with the same composition as that claimed once the treatments are combined and heated. The separate treatments do not detract from the motivation of employing sorbitol diglycidyl ether based on the equivalent utilities of Aufdermarsh, Jr., Takata, Imai et al. and Japanese '666, '875, '280 and '674 in the treatment of polyester fibers.

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**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

(703) 308-2399 (Fax no. (703) 872-9311)  
Monday to Friday from 9:30 to 6:00 EST



Robert Sellers  
Primary Examiner  
Art Unit 1712

rs  
11/1/02